

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James Andre Woodard,

Case No. 21-cv-483 (ECT/TNL)

Petitioner,

v.

REPORT AND RECOMMENDATION

Vicki Genson, Warden,

Respondent.

In an order dated February 24, 2021, this Court noted that the petition for a writ of habeas corpus filed by petitioner James Andrew Woodard was a “mixed” petition — that is, a habeas petition raising both exhausted and unexhausted¹ claims for relief. *See* ECF No. 3. Federal district courts “may not adjudicate mixed petitions for habeas corpus.” *Rhines v. Weber*, 544 U.S. 269, 273 (2005) (*citing Rose v. Lundy*, 455 U.S. 509 (1982)). Accordingly, Woodard was given two options: he could voluntarily dismiss his unexhausted claim for relief (and likely forfeit his ability to raise that claim in federal habeas proceedings), or he could voluntarily dismiss his entire habeas petition, present the unexhausted claim to the state courts, and then return (if necessary) to federal court with each of his claims after the state-court proceedings had concluded. Woodard was given

¹ Specifically, Woodard’s claim (raised in ground three of the habeas petition) that his appellate counsel had provided ineffective assistance had not yet been fully litigated in the state courts, as Woodard himself acknowledged in the petition. *See* Petition at 9 [ECF No. 1].

30 days to make his decision, failing which the second option would be chosen for him and the petition would be dismissed without prejudice as a mixed petition.

That deadline has now passed, and Woodard has not yet responded to this Court's February 24 order. Accordingly, this Court now recommends, in accordance with its prior order, that this matter be dismissed without prejudice. Because the basis for dismissal is not debatable in this Court's view, it is further recommended that a certificate of appealability not be issued. *See* 28 U.S.C. § 2253(c).

[Continued on next page.]

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. This matter be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings in the United States District Courts.
2. No certificate of appealability be issued.

Date: April 9, 2021

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

Woodard v. Genson
Case No. 21-cv-483 (ECT/TNL)

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).